

Commander, is now ready to receive cargo, and will be one of the first ships of the season. For freight or passage, having first-rate accommodations, apply to Captain Lewis, on board; to
F. E. B. WORTH; or
J. B. METCALFE.
December 28, 9916

notice is hereby given that tenders will be received by the Commissioners, at Penrith, at their rooms, next to the Rose Inn, on or before Monday, the 17th instant, at noon. The plan and specification may be seen upon application to either of the Commissioners.

Penrith, December 11. 10070

MR. J. CLARK begs to announce that his Ball will take place at his Assembly Rooms, Elizabeth-street North, on Monday, the 31st December.
Tickets to be had from Mr. Clark only.
189, Elizabeth-street, December 12. 10167

HORSE BAZAAR,
208, Pitt-street.

MR. STEWART has removed his place of business from York-street 209, Pitt-street, nearly opposite the School Arts. 95

Holloway, near Temple Bar, London, and
J. K. HEYDON,
Wholesale Agent,
78, King-street, Sydney.
N.B.—Directions for the guidance of
patients, in every disorder, are affixed to e
box. 193

PIECE GOODS.
Welsh and Lancashire flannels
Serges—white, red, and blue
Baize—green, blue, and red
Ticks—linen, union, and cotton
Scotch twill shirting
Chamberys and Programs

COUNTRY BUYERS visiting Sydney will meet with a large and varied assortment of **Drapery, Hosiery, Slips, Blankets, &c.**, at a great reduction on former prices in quantities to suit their wants.

WILLIAM DRYNAN,
9586 Late Messrs. Howard, Mason, & Co.

Supplement TO THE SYDNEY MORNING HERALD

FRIDAY, DECEMBER 14, 1849.

LAW INTELLIGENCE.

SUPREME COURT.—WEDNESDAY, Dec. 6.

Before His Honor Mr. Justice TAYLOR, and the following special Jury of twelve—viz., Messrs. A. Wilson (foreman), Armitage, Blake, Barton, Brame, Brighton, Brown, Crawford, Cowlishaw, Croft, Cook, and Curtis.

TOWNS v. THE UNDERWRITERS OF THE ISABELLA ANNA.

(Continued from Yesterday's Supplement.)

Mr. MICHAEL addressed the jury for the defence. Taking for granted that his learned friend, the counsel for the plaintiff, was sincere in the wish he had expressed to lay this case fully before them, he thought as many mistakes had been made in doing so, as his own clients could possibly desire. The case was to him, one of unusual difficulty, arising from peculiar circumstances. There were, in fact, two cases against the defendants; or rather, the same case was divided between two plaintiffs, into two separate actions, and therefore, the defendants laboured under this difficulty, that the plaintiff's case had been fully brought before the jury, while they were deprived of the benefit of any admission or statements which he might have made. They had heard the evidence of Mr. Fotheringham, the other plaintiff in this matter; they were forced to take all that that gentleman could stir up to his conscience to swear against them, but they were not allowed to make use of the admissions which they could have proved Fotheringham to have made, against the present plaintiff, Towns. There could be no doubt that this was materially to the disadvantage of the defendants; but he would say that he scarcely regretted it, believing, as he did, with the fullest confidence, that as they had before established the justice of their case, in the face of this disadvantage, they should be able to do so again. He believed he should be able to show the jury as he proceeded, that in spite of the declarations and protestations of his learned friend on the other side, that he had not been guilty of any extraordinary candour, that entire openness and honesty displayed in the case which the plaintiff had laid before them. On the contrary, he should show that every thing that could be laid hold of to prejudice the defendants had been unscrupulously taken advantage of. He repeated he cared not for this, nor for the great ability with which the instructions of the plaintiff in this case had been carried out, by his learned friend. He had dealt both with that ability and the unfavourable circumstances, successfully before, and he was confident of being able successfully to deal with them now. In opening this case to them, his learned friend had taken care to allude to the plea, which charged the plaintiff with a knowledge of the unseaworthiness of the Isabella Anna, at the time when the contract of assurance was entered into. He had said that the plea was taken upon the record, and that the defendants believed its truth and intended to prove it. They found indeed now from the lips of Mr. Fotheringham himself, that Mr. Towns had nothing to do with the management and repairs of this vessel; that, he (Fotheringham) was entirely the manager and directing owner. But how were the defendants to know this until that admission was made? They had placed the plea on the record in all honesty of intention to bring the justice of the case fully before them. He was persuaded the jury would see sufficient in the evidence it would be in his duty to bring forward fully to justify them in having done so. His learned friend had altered the law of the case, and he would very briefly state his observations, promising however not to detain them long, as it was more strictly the province of the Judge to direct them in this matter, and he was content to leave it in his hands. The case which was relied on by his friend was one which he also relied on at the former trial, viz. the case Phillips v. Nairne; now he had contended at the last trial that this case was not in point, and his honor Mr. Justice Dickinson, who tried it, agreed that it was not. He had therefore already a judicial ruling on the point. In the case of Phillips v. Nairne there was an express agreement in the policy of assurance that the underwriter assumed her against all perils of the sea whether she was seaworthy or not; but the law of assurance was this. When at owner of a vessel insured her, she was to be taken as seaworthy, whether the owner was aware that she was so or not. The knowledge of her defect was not a necessary ingredient in the contract, to free the underwriters from responsibility. If the underwriters chose to become responsible for all damages that she might possibly receive from the perils of the sea, in the condition they saw her, whether that condition were bad or good, they would, of course, be liable; but there was no such clause in the contract here, and therefore, the case of Phillips did not touch the present case. The present case must be taken on the general and ordinary principles of assurance. Those principles were, that every vessel insured must be tight, staunch, strong, and seaworthy at the commencement of the contract of insurance. She must be seaworthy at the time the risk commenced. His learned friend had laboured to impress upon them that if a vessel became unseaworthy ten days—nay, ten minutes after

the contract was made, the underwriters became liable. No doubt, this was true; but it did not carry the case one jot further against these defendants. If the vessel were seaworthy at the time the risk commenced, at the moment the contract was entered into, it mattered not whether it was ten minutes or ten months, or ten years after, the underwriters were liable as far as the terms of their contract went; the ship must be at the moment of the contract in a condition to deal with the ordinary perils of the sea; if she were not so, the contract never attached at all. To establish any contract you must have, in the first place, a staunch, strong, seaworthy vessel, competent to deal with the ordinary perils and contingencies that she would meet with at sea; there could exist no such contract with respect to a rotten tub, a vessel such as he should prove the Isabella Anna to have been, utterly incompetent to deal with such perils and contingencies; he could not better illustrate these valuable principles—valuable not only to commercial men, but to the public at large—than by reading to them some decisions from the judges in reference to them. In Park's Marine Insurance, a work of great authority, page 465, the case of Lee v. Beach, was thus noted:—"The plaintiff had purchased a ship, and after having her surveyed by proper judges, he sent her into the dock, and there had her fully repaired, and the ship-builder was ready to swear that he had effectually repaired her, as he thought, having done all that was required to make her a good ship; she was then taken into the government service, on which occasion she was set under survey by the persons employed for the purpose. She sailed out of the Thames, and arrived at Portsmouth; but being very leaky with bad weather, the Admiralty ordered her to go in and undergo a survey there. This was done, and it was found on opening her, that some timbers near her keel were very bad, inasmuch that she was condemned as insufficient to proceed. The plaintiff having insured her, applied to the underwriter to pay the cost of the repairs, and the plaintiff insisted he had, and could prove that he had done every thing in his power to send her out sufficient and good, and that this defect was a latent cause of her bad bargain. He had the ship, defective as she was, not injured from any sea loss after the insurance was made." Now this case, he especially called on the jury to consider, as it presented many similar facts to that of the present case. The Isabella Anna was said by Mr. Chown to have been effectually repaired; and so with the vessel which sailed from the Thames; the shipwright was ready to swear she was effectually repaired; she was surveyed by the government surveyor, and then on her arrival off Portsmouth was ordered in and found unseaworthy, from rotten timbers in her keel. In another case Lord Eldon said, "This is a mere question of fact, whether the ship when she sailed from Leith to Picton was seaworthy or well furnished, tight, staunch, and strong, for the voyage insured. I have often had occasion to observe here, that there is nothing in matters of assurance more important than the implied warranty, that a ship is seaworthy when she sails upon the voyage insured. It is not necessary to enquire whether the owner acted honestly or fairly in the transaction; for it is clear law, whether honest or just the intention and conduct of the owner may be, if he be mistaken in the fact, and the vessel in fact be not seaworthy, the underwriter is not liable." In another case Lord Mansfield observed, "Insurances are contracts of speculation. The special fact upon which the risk is to be computed lies most commonly in the knowledge of the insured only. The underwriter trusts to his statement, and proceeds upon confidence that he was well kept back any circumstances within his knowledge to mislead the underwriter into the belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist. This keeping back such circumstances is a fraud, and therefore the policy is void. Although the suppression should happen through mistake, without any fraudulent intention, yet still the underwriter is deceived, and the policy is really different from the risk understood, and intended to be run at the time of the agreement." It was therefore with reference to these principles, so fully stated in the past, and he quoted, that the plaintiff brought this action, but notwithstanding this fact, he had one count in his declaration for money had and received; viz., the premium paid upon the policy to the defendants, showing that he was well aware that the vessel was not seaworthy at the commencement of the risk, the contract could not attach and was void. The insurers felt this, and at once paid the amount of premium they had received into court, and it had been taken out of court, and was at this moment in the owner's pockets, and still they persisted in their action for a breach of the contract, which their own act showed they knew to be a nullity. In this case then, the question, the sole and bare question which arose out of the whole of the evidence, both for the plaintiff and for the defence, was, whether the vessel was seaworthy, fit for a six months' sandal-wood voyage at the time of the year he sailed, or was

she not? With regard to what a seaworthy vessel was, he perfectly concurred with his learned friend in taking Mr. McCulloch as an high authority as could be referred to on the subject; Mr. McCulloch held however that juries should hold owners to a pretty strict proof of the seaworthiness of their vessels, and no doubt this should be the case. This was necessary, not alone in justice to the underwriters, but from the number of great interests involved. If any person sent goods in any vessel, he could not go down into the hold with his anger to bore into her timbers to see whether she was rotten or sound. The shipper must take it on trust that she was seaworthy; and if the owner sent her away in an unseaworthy condition, he was as much responsible, though he built her unseaworthy intentionally. The owner had the whole control, and therefore it was necessary that he should be finally responsible. Mr. McCulloch, at page 1018, says, "It is further to be observed, that the nature of the trade in which she is meant to be employed. And it is a wholesome rule that owners should be held to a pretty strict proof of this. It has been already observed that any defect in point of seaworthiness is a breach of the contract upon a ship. There is not only an express, but an implied warranty in every policy that the ship shall be tight, staunch, and strong, &c., and the reason of this is plain. The insurer undertakes to indemnify the insured against the extraordinary and unforeseen perils of the sea, and it would be absurd to suppose that any man would insure against those perils but in the confidence that the ship to be insured was in a condition to resist them, and that every ship must be exposed in the usual course of the proposed voyage." So that they would see they were now in this position; if this ship, the Isabella Anna, was not tight, staunch, and strong, she was not fit to deal with the ordinary perils of the sea—if she were not prepared to meet them and overcome them, the underwriters were not liable; if she were not fit to meet with a gale of wind or if she were not fit to survive it, if the fact of her unfitness became apparent, the underwriters were discharged from their responsibility. He would now look at the case that had been laid before them by the plaintiff, the support of the seaworthiness of the Isabella Anna, at the commencement of her voyage, and he must say it appeared to him, to rest on evidence so frail, that he might well have relied on the evidence which had been adduced at the last trial, to rebut it. His learned friend had, in his opening speech, said them, with many eloquent professions of seeming candour, that it would be his object to bring before them all the facts of this case; that he would bring forward every title of evidence he could lay hold of, and lay both the bad and the good before them. He would ask the jury carefully to examine how far those specious promises had been kept. He doubted not that his learned friend would do what he said, but he had been instructed to say so, and believed in all simplicity, that he should lay all the facts that he could get at by his clients, before them. He felt convinced by his learned friend was far too great, to injure his case, by making such professions, knowing that he should not be able to realize them. But what his learned friend had promised, he (Mr. Michie) would to the best of his ability, perform; he would put before them every title of evidence he could lay hold of, and lay both the bad and the good before them. He would call before them every procurable witness, to throw light on those circumstances; he would go back through the whole history of the vessel, from the time she was first heard of at the Cape of Good Hope fourteen years ago. He would prove to them that this staunch, tight, seaworthy, vessel, described by his learned friend as so perfect, had, in 1844, this vessel was twice ashore at New Zealand; that she was ashore for nine days, careened over, the rain beating against her decks, and the waves beating against her bottom. He should prove that her water-way seams were open then, though they were closed, according to the evidence on the other side in 1847. He should prove all this by persons who were present, and could not be mistaken as to the facts; evidence which was not before them at the last trial, and which even his clients were totally unacquainted with at that time. He would read to them the evidence of a respectable man—Mr. Cretney, who was in the vessel on her voyage to Auckland in 1844, and who states that, at that time,

the vessel was unseaworthy—that her timbers were rotten, that she was leaky and worked in her water-ways even before she went ashore. He should call Mr. Abercrombie, who sent his own vessel, the Vixen, to assist in getting her off shore at Auckland, who was himself present when she was got off shore, and himself saw her go on shore again. (The learned counsel then went through the evidence of Cretney and Mr. Abercrombie). He had now brought there attention to the state of the vessel in May, 1844, when she proceeded from New Zealand on her voyage to Hobart Town. He would endeavour to bring all the evidence before them chronologically. Mr. Abercrombie was examined at the former trial, and though perhaps they might not be able to place him in the box at the present time, it was a part of the order for a new trial, that the evidence of witnesses examined at the former trial might be read from the Judge's notes. They had the evidence then of Cretney and Abercrombie, both seeing her ashore at Auckland, and lying in the wretched condition he had described. They next found her at Hobart Town, and they would see what her condition was when she got there, and they would remark, that there was a marvellous coincidence in all the evidence of the witnesses from all the different places, as to her state. If she was seaworthy at that time, they might infer that if she were done injustice in one place, she would be done justice to in another. But exactly what was said of her at Auckland, was said of her at Hobart Town. On her arrival at Hobart Town her condition was so bad that she could not be sent to sea, and the commission had been sent down to Hobart Town to ascertain the result of that survey. That commission had taken the evidence of two marine surveyors, Messrs Tonkin and Aldridge, as to her condition, and they both agreed as to the state of her condition; now there could be no inducement to these respectable witnesses to swear falsely, to make the condition of the vessel appear worse than it was. The Isabella Anna at this time was surveyed, and the condition of her was heard examined and of whom he should have something to say shortly. Johnson had had her surveyed, and they would see from the evidence of the surveyors, evidence not brought forward at the last trial, that her timbers were then unsound in the very places they were now represented to be, that her fastenings were loose, and her water-way seams; that her copper and sheathing were injured by her having been ashore, and that one of the witnesses estimated the repairs necessary to put her in seaworthy condition would be £1600, the other at £900 besides her copper and sheathing. This was the evidence of the surveyors; and they had the evidence of Johnson himself, that he only expended £200 upon her in Hobart Town; while all that was expended upon her since, in 1847, by Mr. Fotheringham, was £600; no doubt it had been said, and made out to be that she was in a very bad state, and she had been a voyage to China, and had brought a cargo of tea back in good condition, but this was no proof that she was sound, staunch, strong, and seaworthy; they well knew that there were many rotten timbers in the Isabella Anna knocking about, but because they managed to float, they were not necessarily seaworthy; they were sent by grasping and unscrupulous men, for the purpose of gain, to risk the chance of the waves and winds, and who cared not that their schemes of aggrandisement should involve the crime of murder, for it could be looked on as very little less. (The learned gentleman proceeded to read and comment on the evidence of Tonkin and Aldridge, which will be found in the evidence for the defence.) Now, he would ask them, as men of common sense, was it possible? did it come within the scope of human credulity, that people so far removed from every influence that could affect their testimony, should concur in their opinions and examinations of this vessel unless those opinions and examinations were founded on fact? Was it to be imagined that that respectable man, like these should wantonly lay themselves open to an action for perjury—merely to injure the plaintiffs or to benefit the defendants, of whom they knew nothing whatever? Then, they had the condition of the Isabella Anna, (unless incredible perjury had been committed) at Hobart Town in 1844. Then Johnson, having spent £200 in repairs, which ought to have amounted to £1400, sent her to China, and he should proceed to follow her on that voyage; and they thus came to the evidence of Captain Wingfield, and it was for them to judge which they could trust most, that gentleman's or Johnson's. The Isabella Anna went from Hobart Town to China under the command of Captain Board, the owner, Johnson, being on board. Board, however, according to the evidence of Johnson, was discharged at Hongkong, and Captain Wingfield took charge of her. Now the evidence of Captain Wingfield, though corroborated in its main facts by Johnson's, was entirely opposed to that worthy person's in its general character. The evidence of Wingfield went to show that when he took charge of her she was in a very bad state, that her timbers were rotten, her seams open, and that she worked very much. Johnson himself admitted that a beam was taken out, but he qualified this admission by saying that it was a very good beam though it was taken out, and that there was no occasion for its being taken out. (The learned counsel here read through Captain Wingfield's evidence, commenting on it as he went on, and showing how entirely inconsistent it was with that of Johnson.) Here then was another witness, competent in every way to judge of the seaworthiness of a vessel, agreeing with all those who had previously been connected with her; and this

witness too was entirely without the influence of Korf. He did not rely on Mr. Korf's testimony, did not build on his opinion of the Isabella, though he could not see why Mr. Korf might not be given credit for giving his evidence fairly and honestly. But he could do without Korf, he could afford to make his learned friend a present of him, for there was abundance of concurring testimony that she was bad—concurring and overpowering testimony that her timbers were rotten, and that wherever she went that she always leaked. Captain Wingfield then brought her from China, and on her arrival in Sydney, her owner, Johnson, doubtless for some very good reason or other sold her to Mr. Isaac Simmons. Now they would bear in mind that Johnson said in his evidence, though Captain Wingfield said she leaked all the way, that she was "as tight as wax," that she made no water at all, that she was as staunch as stanch could be; now it was somewhat strange, if this was all true, that the very first thing Mr. Simmons should do, was to put her on the slip; true, Johnson tried to explain this away, by saying that she would want re-caulking; but why should she want re-caulking if she were tight as wax? But he should be further able to prove that she was not caulked at all; that she had only some repairs in her copper performed; and he should say that on a voyage to New Zealand, after the repairs by Mr. Simmons, that she required pumping every two hours; therefore, the expert of Mr. Johnson to get himself out of the dilemma entirely failed him. He should prove by Captain Rogers, who had arrived that very morning from the Tweed, where he resided, and who, also, therefore, was under no interested influence, that he took the vessel down to New Zealand for Mr. Simmons; that she leaked even while in harbour, that she leaked very much as soon as they got into rough water; and that in bad weather they pumped constantly. Johnson, in his evidence, said that Captain Rogers swore that the vessel made water, he would not believe it; but when asked if Mr. James Simmons, who went down in her, would also swear it, what he would say—he answered that might make a difference. Mr. James Simmons, however, did swear it as well as Captain Rogers, and they would both be put into the box. At New Zealand, Captain Rogers found her bad—her timbers rotten, and concurring with all the other witnesses that she was quite unseaworthy, and had long been so. What could they think of the evidence of Johnson, when they found him thus contradicted by every other witness—by Cretney, by Abercrombie, by Tonkin, Aldridge, Wingfield, and Rogers? What must they think of him, as the witness, of all witnesses, called to contradict others? Mr. Simmons bought her from Johnson for £600, a sum rather significant of what her condition really was. Simmons it appeared spent very little on her; he was too sharp a man; and apparently not thinking much of his bargain in eight months he sold her again to Fotheringham. The Isabella Anna went out of the possession of Simmons into that of Fotheringham in June 1848. Fotheringham sent her two or three voyages, and then she became due for the slip again, and on to the slip she went again, where, according to his learned friend's statement, she was made a permanent, lasting vessel. His learned friend, let it be remembered, had promised to prove this in every possible way, and he had promised to lay all before them, the good and the bad, and to call every body before them who was in any way connected with the repair of the vessel. No doubt, he repeated, that he believed he should do this, that he had been so instructed, but when they came to the evidence of Fotheringham, the easy, plausible Fotheringham, what appeared (on the cross-examination of that plausible gentleman, after taxing his memory to a wonderful extent, he succeeded in remembering turning a man out of the yard, who worked upon the vessel, named Adam Jackson; the reason he gave for it was, that he had been called a lawyer; a strange reason certainly, but the plausible Fotheringham was given to strange reasonings; it was a reason as strange as his reason for persisting in staying in the room during the examination of Bradley after he had been told to withdraw,—namely, that the Chief Justice had told him to attend at the examination. Here he became at once the obedient Fotheringham, not the interested Fotheringham. He could have no private motive for stopping; it was not to influence Bradley in any way, that he chose to stop, but because the Chief Justice had told him to attend. But he ceased to be the obedient Fotheringham, when called on to produce the surveys. These he refused to produce; his memory however served him so far as the turning Adam Jackson out of the yard for being called a lawyer. Accompanied as he was to see and hear lawyers depreciated in every way, discount as in the mind of the plausible Fotheringham, who turned a man out of his timber yard for being called one. He (Mr. Michie) had asked Mr. Palmer, (Mr. Fotheringham's partner) about this man Jackson, and he had stated, that he was not a bad character, but, on the whole, a respectable man, but that he was given to answer unnecessary questions. No doubt this exception to the questions was pregnant with a grave meaning; if a man regarded questions which might involve the expenditure of £1400, instead of £600, he was a lawyer, and must be turned out of the yard. Well, Fotheringham having drawn on his recollection, at last remembered that Jackson and nine others who were at work on the vessel were not called; and this after instructing his learned friend to promise he would call every one. It was also worthy of remark that all the men who were called had worked on the larboard side of the ship; all those who had not been called in the after part, precisely where the parts described as defective by other witnesses, existed. He must say that he must take some blame to himself, and confess, that in the simplicity of his heart he had been somewhat out-generalled in this case. After having heard the case opened as it was by his learned friend, and saw shipwright after shipwright called to prove that this old basket had been made a permanent lasting vessel, he did think that all would have been called; and it was only a few days ago he had discovered how notably he had been done by the plausible Fotheringham. But, he had further to complain of the non-performance of

his friend's promise. Why had he not called Captain Ashmore, who had surveyed the vessel, and must have known her condition? Why had these plaintiffs, who had undertaken to prove the seaworthiness of the vessel, not called him? Was this the fulfilment of his learned friend's promise? He, at all events would fulfil his, not in the shuffling manner of the plaintiff, which showed that it had only been made to be broken, but faithfully, and in its full integrity. He would call Jackson, the lawyer—the interesting man turned out of a yard for being only called a lawyer. He would not miss examining the curiosity, for he should be glad to say in any part of the world he might go to, that he had seen a man who had been turned out of a shipwright's yard for being only called a lawyer. He should also call Ashmore, and several others of the shipwrights;—the rest had left Sydney, although the witness Palmer fairly admitted they were in Sydney at the time of the first trial, and might have been examined. Palmer had told them that twenty men were employed on board the ship, ten only of whom had been called. The evidence of Palmer, indeed, was the evidence of an honest and respectable man, and stood out in commendable and brilliant contrast to the miserable shuffling of his disreputable partner. But it was said, the reason why Ashmore was not called was, that he was a surveyor for Lloyd's, and that Mr. Donalson was agent for Lloyd's. What possible ground was this for thinking that Captain Ashmore would commit perjury? The notion was quite absurd. He would now tell them what these men who had not been called knew, and what Fotheringham knew they knew, for he admitted that he had some talk with Jackson in his office. Jackson was at work in the after part of the ship, and he came on a part perfectly rotten, and he refused to go on with it, and did not go on with it. He told Brown, the plaintiff's witness, of it, and Brown did not deny that he might have done so, and admitted that Jackson did not finish the work. This man—honour to the hard hand and honest heart—refused to do that on a small scale, which Fotheringham hesitated not to do on a large scale. Knowing this, there must have been design in keeping this man's evidence back. It was proof, not only of the unseaworthiness of the vessel, but of Fotheringham's knowledge of such unseaworthiness, and it was not honest, not reputable. They might think this was hard language, but his learned friend had been instructed by Towns to say he would bring forward every fact and every witness, and as he owned they must acquit Towns of this knowledge, they must take it that Towns was deceived by Fotheringham. All the other shipwrights whom he should call, and who had worked in the after part of the vessel, would abundantly prove that their borings were as often bad as good, and that it was with great difficulty they could get their fastenings to hold. This was the reason they were not called. Even those who had been called merely said that the timbers were pretty good for an old vessel. In opening the case, he had alluded to the difficulty and unfairness of the position they were placed in, by being obliged to take the evidence of Fotheringham in favour of the plaintiff, while they could not have his admissions as against Towns, excepting, indeed, so far as he denied those admissions, and they succeeded in proving the denial incorrect. It was quite evident Fotheringham was quite aware that the repairs were merely skimmed over; but still, he spoke in his evidence of her having "turned out so well." If he thought so, why did he not call all who were at work on her? If he made such a statement as that, it must be true or false; if true, why keep back any information; if false, what becomes of the illustrious Fotheringham, and the case? Now the part of the vessel described as bad by all the witnesses, extended about 30 feet from the stern. Not one witness who had been called had worked in this place. He had carefully collated all the evidence that had been given, and he would read the results, and they would find that none of them were employed in this part of the vessel. (The learned counsel proceeded to read a brief abstract of the evidence of the shipwrights.) Now, he thought, if he succeeded in proving this, that none of the men called worked in this, the worst part of the ship, while all who had not been so called had, that he had made out a pretty stiff case against Fotheringham, and already he had partially proved it out of the mouth of Fotheringham himself. Now, what he should prove in addition to this, was, that having been thus repaired, that she leaked even while in harbour; that as soon as she began to leave, she was pumped unusually, sometimes every two hours, sometimes every four hours. She left Sydney on the 3rd February, 1849—the date was important, because it was one point in the proof of the state of the weather on the voyage. His learned friend, on this point, had relied on the testimony of some ancient mariner to narrate the account of a so called hurricane, which took place 500 miles off, but which his learned friend would have them assume included in its influence the Isabella Anna. Whatever weight this theory might have if unopposed, he thought it would have none when opposed by the evidence he should call. He should call the supercargo of a small vessel called the "Colossale." The "Colossale" sailed on the 29th January—three or four days before the Isabella Anna. Her destination was also New Caledonia, and both vessels arrived nearly at the same time, and the witness would tell them, that he had no hurricane on the passage—that he met with nothing more than an ordinary gale of wind, but his vessel did not leak—not had he to pump more than usual—nor indeed was there any hurricane noticed in the log of the Isabella Anna. There it was only spoken of as a gale of wind, but his learned friend was so hard up, that he was obliged to raise the wind to a hurricane 500 miles off. There was a great deal of difference between a gale and a gale of wind, and he was prepared to prove that all the wind met by the Isabella Anna, would not have been felt had she been the tight, staunch, and strong vessel she was represented to be. But there she was another singular omission in the plaintiffs' case. After the vessel started, what cause did he assign for her loss? None at all. She got through the hurricane; she goes on from one place to another, staggering about, but unable to go to Anstam. But while on this subject, he would allude to the

remarks of his learned friend respecting the surveys made of the Isabella Anna at New Caledonia. He treated them as nothing—spoke of them as what the parties pleased to call surveys; but if they were of little importance, why withhold them? If he meant to say they were concocted, his own witness, Campbell, put his hand to a series of lies—the other side had tried to suppress these surveys. He did not think it was well in their mouth to speak of them as false. They would see by the evidence of Bradley himself, that by the officers of the Spy, the Statesman, Captain Towns' own vessel, the Eleanor, as well as by the Lynher, was the Isabella Anna examined, and that he, Bradley, went into the hold with them. The excuse they offer for these repeated examinations was, that it was necessary for something to go to Sydney, in order to obtain assistance. This was the best reason they had to give; but if she was the tight, staunch, seaworthy boat spoken of, and had been strained in a hurricane, why not write to the owner and say so? What further excuse was necessary? The plain truth would have served the master's purpose as well as anything else. Why the absurdity of assigning a different reason,—a reason too that would be most unpleasant to her owner,—as it would endanger her insurance. But without there were some foundation for these surveys, why did this Bradley, (the master of the Isabella Anna), go into the hold with the officers of the Spy and the Statesman? His hon. and learned friend vehemently attacked the survey made by Captain Strachan, of the Lynher, because that gentleman happened to buy the wreck. He could see no reason on this account, that the survey was made from interested motives, but even if this imputation was allowed to have any weight, it could not affect the previous surveys made by the Spy and the Statesman. Then again, as regarded the evidence got out of Bradley, on his cross-examination,—the learned counsel no doubt under instruction made a most unfair and unworthy insinuation, that he gave evidence unfavourably to the plaintiff because he was in Mr. Boyd's employ. Now the plaintiff must have known that at the time of the first trial Bradley was not in Boyd's employ, so that the Boyd influence could not affect him then. If they were afraid of the Boyd influence now, he, on behalf of the defendants had offered to take Bradley's evidence as given at the former trial from the Judge's notes; and so far from Bradley's evidence being favourable to the defendants, or having any leaning towards them, it was quite evident that he was a most reluctant witness. They found that long before the survey of the Lynher, the officers of the Spy, the Eleanor, and the Statesman, at the request of Captain Bradley, had been on board the Isabella Anna, to inspect her. None of these people had any pretended interest in making a false representation of the state of the vessel. His own officers too—Campbell, the mate, who now was called to deny all that he had before set his hand to, and the carpenter Henning, confirmed the representations made by Captain Bradley in his letter to Mr. Fotheringham, and supported by the various surveys as to the unseaworthy state of the vessel. The attempt to suggest that Strachan had been induced to commit perjury because he wished to get the wreck cheap, completely failed; but if such a motive operated with him, it could not operate with his officers, who joined with him in the survey. The sailing master, and Love, the mate of the Lynher, had no such actuating motives. It was against their interests that the voyage in which they were engaged should be impeded. The insinuations would not bear examination for a moment, and it was really almost too much for the temper to hear these rash charges of perjury thrown out against witnesses who had given evidence against this rotten old tub. He would now proceed to address them on the circumstances of the voyage of the Isabella Anna, after her leaving Sydney, on the 3rd February, 1849. And first, as to the weather, they had the evidence of Mr. Donalton, of the Colossale, to which he had already adverted, as opposed to that of Captain Tanner, brought up to speak of a hurricane said to have occurred 500 miles off. The two vessels, it would be seen, started at about the same time, arrived at New Caledonia about the same time, and therefore must have encountered the same weather. Mr. Donalton said he had encountered exactly the weather entered in the log of the Isabella Anna; that he met an ordinary gale of wind, and it had no results beyond an ordinary pump of wind. No leakage, no extraordinary pumping arose from it. This was far more satisfactory evidence than that of Captain Tanner, although he did not mean at all to impugn the respectability of that gentleman or the veracity of his next defence. He next alluded to the letter of Captain Bradley to Captain Fotheringham, informing him of the abandonment of the vessel, and assigning as a reason the unseaworthiness of the vessel. Now it would be borne in mind that this letter was written long after the gale of wind, and long before any legal proceedings had been commenced. In that letter there was no mention made of any hurricane, or even of the wind blowing awfully, as had been told them in Captain Bradley's evidence. There was not the least allusion to any injury received by the vessel from these causes, which would surely have been most material had any such taken place. (The learned counsel here read the letter, which will be found in the evidence.) He (Mr. Michie) had pointed over this letter a great deal, and he had found it impossible to assign any reasonable motive which could induce Captain Bradley to have made false representations in it. It was written at the time of the first survey by the Spy. It would be proved that Bradley was in the hold of the vessel with the carpenter and the officers of the Spy, and that he examined the vessel at all points, and he must have known her state. The leakiness of the vessel was specially brought under his notice by Henning, the carpenter, and he admitted having seen Henning put his arm up a timber the full length. At this time he had never seen Captain Strachan. It was not till months after that the Lynher came there, therefore he would defy human ingenuity to show how the influence of Captain Strachan, or any other influence, could affect this letter or the previous surveys. Let the fascination or the villany of Captain Strachan be what it might, it could not work on Bradley till he came in contact with him. Therefore there was no assignable motive for a false representation. It

could serve no purpose. If the straining suggested was caused by the hurricane, why not have written so to Captain Fotheringham? and notwithstanding the very singular effort of his learned friend to discredit his own witness by the miserable insinuation of the Strachan influence at first, and the Boyd influence at last, it appeared clear that Bradley's letter did really show the true state of the case. It would also be shown in evidence, that Bradley was well aware of this on the passage. The evidence of Campbell, of Christie, and of Henning the carpenter, would prove that he was down in the hold with the latter, looking for leaks, for hours. That Henning was employed, with his knowledge, for days together, nailing lead over the inside seams of outside planks, vainly endeavouring to stop the leakage. It would be found in the log, that the long boat was got ready; and in an entry on the 15th February, it would appear that so great was the leakage that if she continued to make more water they would be obliged to abandon her altogether. This was before any of the surveys, and though these things were recorded in the log, not one word was there in it about any straining having been received from the effects of a hurricane, or the tremendous rapping on a long counter, described by Bradley in his evidence. Was not this sufficient to show that the cause now alleged for the loss of the vessel was not sufficient to account for her abandonment? They had heard from Campbell that the vessel touched slightly on a shoal, but they found no mention of any injury done, either in the log-book, or in Bradley's letter to Fotheringham. They had now the history of the vessel thus far, and found that from the commencement of the voyage she leaked, that after twelve or thirteen days, the people were pumping every two hours, and every hour, and this before any gale came on; that they were forced to erect a wee-gee to ease the hands on pumping the ship, and even with all this they were unable to keep the water down; and were they to be told this was a tight, staunch, seaworthy vessel fit to deal with the ordinary perils of the sea; could any twelve gentlemen, in their senses, believe such a statement? The learned gentleman then proceeded to go through the whole of the cross-examination of Bradley very minutely, showing that so far from its having any leaning towards the defendants, that it was of a most reluctant and prevaricating character, and arguing therefrom that the insinuation respecting the Boyd influence was utterly groundless. However shuffling and prevaricating that evidence was, his learned friend well knew that it would be most damning to his case, and therefore, he had felt bound to ease it off by this miserable insinuation. They would see, however, in the shuffling evasion, the disgraceful contradictions, and inconsistencies with which that evidence abounded, that Mr. Bradley was, for the defendants, a most unwilling witness, and they would treat the insinuation as to the Boyd influence as it deserved. He thought the letter and evidence of Captain Bradley, backed as it was by the log, was pretty stiff evidence as to the state of the vessel, without reference to the evidence of the surveyors and others at all. They found she was brought up nearly water-logged before any hurricane took place at all. The evidence of the other witness for the plaintiff, Campbell, the mate of the vessel, did not display any more candour, and he regretted to see any man in his position, let the case be what it might—equivocating and prevaricating as he had done—striving, in the face of his own handwriting, his own entries in the log, to frame falsehoods against the defendants. He was not called at the last trial, nor was he subpoenaed by the plaintiff. He was subpoenaed by the defendants, but they did without him. Bradley's evidence was sufficient, and having got one good stout rogue, they were not necessitated to call another. (The learned counsel here read Campbell's evidence.) They would see from this that in smooth water, lying at anchor in harbour, the Isabella Anna required constantly to be pumped—and though it was all very well for shipwrights and master mariners, men of high respectability, to state their opinion that a vessel built of such timbers as they had seen was fit to go round the world in safety, would any one of them believe that any vessel was fit to go a voyage round the world, that had to be pumped every four hours while lying at anchor in smooth water, in order to keep her afloat? He must again repeat the question he had asked before—If her timbers were so sound, if she were the tight, staunch, strong, seaworthy vessel she was described to be, why was she lost? She did not go down, she struck on no rock, she did not go ashore, she lost no masts or spars, the most terrific effects of the hurricane being the loss of an old staysail. Why was not the Colossale, who had the same weather, lost? Why did she not become leaky and require pumping? It was because she was a staunch seaworthy vessel, and the Isabella Anna was not. True, all vessels do not have the same fate at sea, but where were the visible signs of any unforeseen perils and contingencies on the Isabella Anna? He would now go to another point in the case, and it was rather an important one. They had heard a good deal about these timbers, which he must confess, he was a good deal surprised at the refusal to let the defendants have access to those timbers, for the purpose of examining them; it seemed almost impossible to account for a policy like this, if indeed, the case of the plaintiffs was the case of truth and justice; they were told indeed, that they, the counsel for the defendants, might see them, but of what earthly use would such an inspection be? What could they know about them, when being attended by witnesses who could explain to them matters which they knew nothing at all about? His learned friend said, that this policy had been adopted by his advice, and, notwithstanding his explanation, he must say he did not think, in this instance, he had acted with his usual judgment. He felt, however, that some explanation was necessary, for certainly, the course he had taken had a horridly bad appearance; that these spirited, honest, plaintiffs, seeking for justice on the merits of the case only, anxious, in all candour, to bring every fact, bad or good, fairly forward, should send all the way down to Kanella for these timbers, and having brought them, to cuddle them up out of the sight of the defendants. The explanation which had been given was this, that had they permitted the defendants to

[illegible][illegible]

we lost the mainmast and foretop-gallant mast about three weeks after the mainmast rolled over the side when the ship was in stays; it broke off about eighteen inches above deck; it broke in two places: this was owing to the core being very rotten; we rigged a jury-mast, afterwards we met with strong winds from the south-east, off Two-fold Bay, she always worked from her weak state and the fastenings being loose; I bore up for Sydney instead of going on. During the voyage I was compelled often to caulk the water-way seams, because the working speeded it up; I left her in Sydney; I saw her afterwards on the Slip; her keel had a very deep canker, which would arise from many causes,—as for instance going on shore, &c.; she was hogged ever since I knew her; I saw her heaving out of the harbour on her last voyage. Putting doubling and sheathing, &c., on her would not make her seaworthy; she would require new futtocks, (first and second,) new stern post, and new transoms, new lower deck beams, shelf, and new deck, to make her so; she was a fast sailer, and a good sea boat; working in when the motion is in the body of the vessel, and everything seems adrift or loose; labouring is caused by the sea, and is uniform in motion; a sound vessel might labour and not work; the Isabella Anna did not labour much.

Cross-examined: Mr. Johnson was owner when I took command of her at Hongkong; I left England in 1838, as a carpenter first; I went to Hongkong about 1839; I then became officer and made different voyages; I left Hongkong about the 3rd of July; it was not a typhoon we were in; we had a mixed cargo on board, and some passengers.

The de bene case evidence of Messrs. Tonkins and Aldridge, marine surveyors of Hobart Town, was next read. They proved that they held a survey upon the Isabella Anna, in the year 1844, upon her arrival at Hobart Town, from New Zealand. They found that her sheathing and copper were off in some places, indicating that she had been on shore; they took portions of the vessel's ceiling up, and found that most of her floors and futtocks were rotten or defective. Her stern and bows were in good order, for a vessel of her description; her water way seam was particularly open, and indicated that the vessel had worked a good deal; she sadly wanted caulking all over; they tried her timbers with instruments; they both agreed that at the time she was by them, she was not seaworthy so as to encounter the gales to be met with at sea; they both agreed that it would cost from £1000 to £1400 to have the vessel made seaworthy; the fact, said they, that the vessel had gone without any repairs, to China, and brought back a perishable cargo in good condition since they saw her, did not alter their opinion as to her unseaworthiness then; they admitted, on cross-examination, that her transoms, sternpost, and stern frame were good.

The de bene case evidence of Charles Bridges, commonly called "Leffen Charley," was next read: he proved that he was on board the Isabella Anna, and in which he took a part; he gave a minute description of the rottenness of that vessel; he said, amongst other things, that the futtocks generally were very rotten; that lead had been nailed on to some of the seams of the vessel, and had also been placed on bolts so as to prevent them, if possible, from working in the vessel's side, but the lead was partly worked off; that the timbers about the coal-hole were rotten; that one Peter Grant, with his hand, pulled a piece out of one of them; he further proved that her water-way seam showed that it had worked half an inch; that all the outside seams were very bad, and had spewed out all the caulking; that the ceiling around the coal-hole was very bad; and, lastly, that new doubling and sheathing to such a vessel would have been of no service to her.

FRIDAY.

Adam Jackson: I am a shipwright, and have been so upwards of thirty years; I have been in the colony since 1844; I have been employed at the slip several times; I worked on the Isabella Anna; I saw her first in September or October, 1845, alongside Campbell's Wharf; I went on board of her; her condition looked very well on deck; I observed outside that she had been working; and that oakum was out in the seams in the larboard bow and quarter; this arose from weakness; I saw her on the slip in December, 1847, when she was repaired before her last voyage; I worked upon her then; I was employed I think by the foreman at piece-work; all the men so worked; I had the second berth from the stern, starboard side, about twelve feet from the stern post, from the lower side of the wale to the keel; my berth was twelve feet long; her copper and old sheathing were stripped off, and she was dressed down; the plank was re-fastened with iron spikes, from the first 6 to 8 feet from the keel up, the spikes held tolerably well; some held good and some bad; from that upwards they came to be very bad; they got worse until about 4 feet below the wale; here they were in a worse condition. In this bad part, the spikes did not hold well; some of the timbers were so bad that it was like driving into some soft substance; in other places, there were no timbers at all; they had decayed entirely away; after the spiking was done, the caulking followed. In preparing for the caulking in my berth, the man about me (Hawkins) called my attention to a bad place, where the plank was decayed in the seam, about 24 inches below the wale, and below the old doubling; a portion of this bad part came into my berth; the seam was very bad; the decay communicated to two planks, and the greatest part extended under the old doubling. I pointed it out to Brown, the foreman; the water had been running in there; situated as it was, I could not make her seaworthy by putting anything in, without taking part of the old doubling off; I requested Brown to speak to Captain Fotheringham about it; he went away, having been on the stage to look at it; I did not go on with it, expecting Captain Fotheringham to come and look at it; Brown came back ten minutes afterwards and said he had seen Captain Fotheringham, and we were to put a piece in the best way we could; Brown said the plank was bad when I showed it to him; I still left the job; I called Brown's attention to it a second time the next day, asking him to overhaul the place himself; he did so; he picked out a quantity of the rotten plank with his finger and

thumb, and shoved other parts in with his hand; it was discovered then that the timber was gone, decayed, and the spikes left sticking through, where there had been timber; Brown went away, and we let it remain some time longer; the work stood until the next day. I could not make a satisfactory job by putting a piece in without cutting away for it; without cutting away I could not tell how far the decayed part went; I put no piece in, James Hawkins put a piece in. A small portion was cut out, but the upper part was not; I could put my hand and arm in a place where the timber had been; in my judgment that job, without the cutting out, would not be a satisfactory one; I will not positively state whether Brown saw me put my arm in the place where the timber was; at this time she was being re-fastened and re-caulked; they were making also treenail holes, to fit the new doubling on. We could not make borings in my berth as in others more forward, because it was in the way of the cabin deck; I made about eighteen borings in my berth; I did not make so many as I would have done had the timbers been sound; my borings showed all the timbers bad; there was a difference of degrees of badness; in many places there were no timbers at all; I was apprehensive at first I was boring in places where there ought not to be timbers, but I found that was not the case afterwards; I worked a portion of the doubling two inches thick on my berth; I secured it with composition bolts and spike nails; I had to use more spike nails in my berth because the bolts would not hold; I had to use double the quantity of spike nails; I found, when I came to the bends, I had to use more nails, putting three where one would have done had the timbers been sound; the planks were steamed when put on the bends; where the bolts had no timbers to hold them the plank would spring back; for this reason I put no bolts in, near the transom, I found several of the main planks defective; I saw the condition of the vessel in Hawkins' berth, and found it bad; I saw no other parts of the vessel. Sometimes after she was lost I remember being called into Mr. Palmer's office by Captain Fotheringham on the 6th of October, 1848; Captain Fotheringham used more than half a dozen words towards me; there were two other persons present—Captain Smith and Mr. Palmer; I was with Captain Fotheringham about a quarter of an hour; I was in Sydney at the last trial; I was not subpoenaed; I know nothing about the stringer; from what I saw I think she might have been made seaworthy by opening her inside and out; she required several new timbers in my berth to make her seaworthy.

Cross-examined: When I saw the vessel first, I was working for Mr. Bell, a shipwright; he worked at Balmain; I was working at the time on the Cheesford; I looked at the Isabella Anna about a quarter of an hour; the top of my work on the Isabella Anna is where the first sheet of copper would be; the worst part was four feet from the top of my work; the plank was tolerably good outside, but bad inside; the bad I discovered by caulking; I caulked the length of my berth in the presence of the workmen, and sometimes in the presence of Captain Fotheringham and the foreman; one-third caulked well; for eight feet from the keel the timbers were tolerably good; the caulking was here better; I am not aware if I am called a lawyer, to be so called I would consider an honour; many of the timbers were as soft as butter; there were about eleven timbers in my berth; the greater part were not as soft as butter; about four might be as soft as butter; I was then working three days, when I called Hawkins' attention to my berth; I worked altogether about eleven days on the slip; the work was finished the day after was launched; I left that day; I was absent one day sick; Hawkins was absent the same day; the first plank was under the doubling; I found the space between the timbers; I saw was fourteen inches; if one had not been missing, there would only be about three inches space between them; the width of the timbers was about eight inches; she appeared to be 250 tons or more; I saw no old treenails in mine or Hawkins' berth; I put some in (about 18) in my own berth; I saw some put in by Hawkins also; I drove no old treenails out; none were driven out by Hawkins; his berth was the same length as mine; I'll swear to my own berth positively; I saw what was done in Hawkins' berth; I bored from the outside for my treenails; I was on the stage when Hawkins finished the job; I refused to complete it; I might have seen it had I wished; the distance between the ceiling and the plank was in the clear, was about six or seven inches; spikes would hold better than the bolts in the bad planks; the spikes did not hold properly; I did not observe any new plank in my berth, there might have been some, but the bottom was not sufficiently well dubbed to discover it; the plank on the wing transom was very bad; I put about three bolts into it.

Re-examined: Dubbing is dressing or clearing timber with the adze. From that mere operation one cannot tell to a certainty whether the plank is new or not; her tonnage I cannot exactly tell; it might have been 226 tons; I did not take her dimensions; I did not see any old treenails in my berth to drive; if they went into the ceiling they would be driven out from the inside; there would be greater strain on the timbers at that point; I worked occasionally on the transoms, and had to put more spikes in there than in other places, because of the quicker turn there of the planks; when seams are defective inside, they will not stand caulking, sometimes they will not caulk from bad workmanship; but here, in my judgment, the bad caulking arose from the defective seams; I was employed once by Captain Towne, and frequently at the slip; I am going to California.

By a Juror: I saw inside of the vessel, but took no particular notice; my berth was twelve feet long, and extended from the wale to the keel; had I looked for washers inside, and had they been there, I could have seen them; the old copper was cracked a little; I was not there when she was stripped; I did a little of the stripping; I had nothing to do with the bows of the vessel.

Richard Deering: I am a shipwright; I worked on the Isabella Anna in 1847; I worked by piece work; I worked near the forechains on the larboard side, aft; Mackay was next to me; my berth was about ten feet in length; I was not examined at the last trial; there was

nothing to prevent my being called at the last trial; I worked from the wale down to the keel; I put on about four streaks of doubling, I made borings; some of the timbers were bad, some good; I took no ceiling off inside, so that I could see the timbers; all the borings I made were not available, because the timbers were bad; I had then to plug up the bad ones; the general run of the borings was bad; I saw Captain Fotheringham about the time of the last trial, he called me into his office.

Cross-examined: I bored about five or six timbers about the foremast; Mackay and Carter worked near me; they are here; I have not worked on the Juno, and do not know the I am going to do so; I did at last get fastenings for my doubling; I know Jackson; I am not aware he is called the "Lawyer;" I do not know the state of the timbers below the doubling.

Thomas Mackay: I am a shipwright; I worked on the Isabella Anna; I had a berth midships on the larboard side; I caulked, steamed, and sheathed; all the fastenings were not put through the doubling; when I commenced working, I had to make borings for the two lower streaks; some of the borings were good, some very bad. Where I worked, in the best part of a ship—the fore and aft parts go first; I was in Sydney in April last. Some parts of the timbers were bad; where bad, I tried again for fastenings. Captain Fotheringham saw about the time of the last trial.

Cross-examined: I have been a shipwright thirteen years. I have known a vessel four years old with many defective timbers in her. If I saw timbers good in the coal hole I should expect to find the timbers good midships; I bored the same timber in different parts, finding some part good, and some part bad. I worked next to Deering.

Re-examination: In three timbers I could get no fastenings at all.

William Carter: I am a shipwright. I worked on the Isabella Anna before she went away the last time. My berth was the third from aft on the larboard side; I helped to put on the doubling with a man of the name of McCoy, who is now at New Zealand. In boring for the doubling, the borings were as many as good; some were good, others were soft; I could not use all the holes I made. I had to move to other timbers; I had to put extra fastenings in my work, because I could not get proper fastenings; the doubling was steamed; I have worked for Captain Fotheringham twelve years, and have worked at Woolwich Dockyard.

Cross-examined: I work now on board the Juno; Mr. Korff superintends the work; if I drove old treenails out I put new ones in; they led well; I did not see the timbers; I only judge of them from the borings; I helped to work on the stringer; the borings were very good; I think I was on the starboard side.

John Brooks: I am a shipwright, and worked on the Isabella Anna; I had the berth next to the last witness; I worked near the transom and stern-post, on the larboard side; the larboard end of the wing transom was bad; I had difficulty in getting fastenings to it; by bad, I mean rotten; to make the fastenings hold, I had to put in a great many bolts; the ordinary bolts would not do; I put in composition spikes over the bends round the neck; I was not aware if the timbers were tolerably good; the ordinary fastenings would have held; the plank I put on the bends I steamed; the spikes taper at the end, and hold better; I made borings for my berth; I bored about twelve timbers in my berth, some of the borings were bad; the average was bad; the timbers were generally bad; I worked also in the berth of McCoy and Carter; I made borings in their berths; the borings in the three berths were the same; I have been in Sydney since I did this work.

Cross-examined: I was on board the Alligator men-of-war in the capacity of carpenter's mate; I deserted her; I worked on board the Victoria steamer immediately after I deserted; until she was launched; I worked on the Juno; I do not remember driving any old treenails out; I put new ones in.

John McMahon: I am a ship-joiner, and worked on board the Isabella Anna in 1848, when she was alongside the Circular Wharf; Mr. Lachlan was her carpenter. I recollect being at work on the cabin, and in the round-house on deck; the fastenings were very indifferent in some places; the beams I fastened to were indifferent. Mr. Lachlan was at work on a stage over the stern; he called me on the stage one morning before breakfast; he showed me a place at the starboard quarter; the plank was entirely gone; Mr. Lachlan put his hand in and brought out the dead wood; he said he would leave it until Mr. Johnson, the owner, came down; he said it was so bad he would leave it; he worked the decayed part with his finger and thumb; he cut nothing out; the end of the plank was decayed; he said he could rectify a hand-spike through her; I saw this part from the inside; the inside plank was loose, and I had to take it off, and then I saw daylight through this decayed part; Captain Beard joined her at this time.

Cross-examined: I never belonged to a society for keeping up wages; I was never turned off Captain Towne's premises; I have not worked for him for four years; I do not know what listing is—it is a shipbuilder's phrase.

Mr. A. Saunders: I am a general agent; I was from Tahiti in the Isabella Anna, in 1845; Mr. Simmons came up with us; she leaked very much; she was pumped every day two or three times; at one time she was pumped every half hour, in bad weather; she had very little cargo.

SATURDAY.

Mr. O. A. Lloyd: Upon this gentleman entering the witness box, Mr. BRADBURY requested that he might be examined on the *quere dire*. He was examined accordingly, and stated that he had underwritten either the policy of the plaintiff, or that of the Isabella Fotheringham, but did not know which; he had contributed however towards the expense of this action, and considered himself liable for a further share of the costs.

Mr. BRADBURY submitted then, that this gentleman was an incompetent witness, being virtually a defendant; however afterwards he withdrew his objection, saying, that since the late act his interest in the action would only go

to his credibility. He was then examined in chief as follows:—

Mr. G. A. Lloyd: I am an auctioneer; I remember seeing Mr. Henry Johnson, in 1844, about the Isabella Anna, then his vessel; I went on board the day of her arrival, in October of that year; Wingfield was master; I saw Johnson at my office afterwards, about the sale of that vessel; he instructed me to sell her.

[Any conversation between this witness and Johnson, as to the state of the vessel at that time, were objected to as inadmissible. An argument ensued, and it was contended the evidence was admissible, if on no other point but to contradict what Johnson had said as to the state of the vessel at the time he sold her. In reply, the ruling of His Honor Mr. Justice Dickinson in the case of *Simmons v. Fairfax* was cited, to show the inadmissibility of the evidence. His Honor was inclined to think it admissible; but Mr. Michie said, having some doubt about it, and not wishing to peril a verdict, he would decline to go into the conversation.]

William Langridge: I was a seaman in the Isabella Anna on the last voyage; I joined her about a week before she sailed; she was lying at Fotheringham's Wharf; from thence she went to Johnston's Bay, and then anchored off Macquarie's Chair; she made water on the time she left the wharf; I pumped; she was pumped twice a day in harbour; when we got to sea the pumping increased; at first we had good strong breezes; after leaving the Heads we pumped three or four times a day, afterwards every four hours, and then we could not leave the pumps; a wee-goo was erected in the first part of the common gale of wind we had; when we were in the gale the pumps were almost constantly at work, and continued so until we bore up for New Caledonia; the ballast was removed, where we first brought up; she was careened over; the carpenter caulked her outside, and nailed some lead over the seams afterwards, in more than one place; we started then for another part of New Caledonia; in this short voyage, she worked all out the carpenter did; she worked like an old cradle. Her waterway seam opened first, when we erected the wee-goo; it worked when sailing before the wind most; I remember the Eleanor arriving; before her arrival we were going to put the Isabella Anna on shore, with a view to repair her. The captain and carpenter of the Eleanor came on board and staid some time; she sailed from this place for Anatum; when off Walpole's Island she leaked very bad, the pumps were going continually; we turned back, and bore up for some part of Caledonia; in going in we trembled a little over a sand flat; we got over it; then all the men were called aft by the captain; the skylight was removed, and the hatch under the table was taken off, so that we could see what water there was in the hold; there appeared to be four feet; I went down in the run of the vessel with three or four others; we had a look at the timbers, and found them to be decayed on the larboard side; I tried them with my knife, it went into some two inches in some places; Bonlee was one of the seamen on board, he wrote upon a paper after this; the paper was given to the captain; the carpenter took off some lining on the starboard side, about the main hatch; I saw the timbers there, they looked better than those in the run, but looked sudden; from this bay, we went to another bay (Coronation Bay), from this we went to Canella; I went round in a boat with the mate; whilst here, the Spy came in; the weather was smooth; I made smooth as a mill-pond; White (the Captain of the Spy) boarded us; the boatsman came in also; her captain and carpenter came on board of us; the Isabella Anna was put on shore; under her starboard counter I observed a place that had bilged out like a hump on a man's back.

Cross-examined: Any one might have seen it; the weather we had was a common gale of wind; it was nothing particular; I have been in worse; we had the main top-sail set all the time; we lay to all the time during this breeze, upwards of two days; it is not usual to lay to in a common gale of wind; I do not think we scudded under bare poles; I never saw a ship scud under bare poles; we went down the top-gallant yards, and hoisted the top-gallant masts; this was on a Sunday, in the heaviest of the gale; the bad weather commenced upon our leaving Howe's Island; I do not remember what sail we had when we struck; she was not going right knots at the time; she was going about four; I had lay on board; I attempted to speak to Captain Fotheringham about wages, but he would not hear what I had to say; I had heard that if the Isabella Anna was unseaworthy we were entitled to wages; right or nine made a similar application; at Canella I cannot say how often we pumped her, but I think we pumped her only once a week, because we were then in smooth water, and the vessel was quiet and consequently did not make much water.

Re-examined: I was not examined at the last trial; she might have scudded whilst I was below.

Mr. Doolittle's evidence, given at the last trial, was read from the Judge's notes, to the following effect:—He said—

He had been supercargo on board the Collicaster, and sailed about the same time as the Isabella Anna for the United States, during the month of February he experienced gales of wind, which did not cause the vessel he was in to leak more than usual, or to make her timbers rotten. From the partial survey he made of the Isabella Anna at New Caledonia, he pronounced her to be in the same state in February 1846; we sailed on the 2nd; she was making water before she got out for the first two or three days; we had fine weather; we pumped every watch of four hours, every day after the leak gained; we

(To be continued in to-morrow's Supplement.)

I am a seafaring man; I first joined the Isabella Anna in October, 1845; we sailed in that month, and were out two months; we returned through the loss of our anchor at Kromanga; she did not make much water until after we left the island; on our way back we pumped both pumps every hour; the weather was not bad; we arrived in Sydney; I shipped as second mate in the same vessel in February 1846; we sailed on the 2nd; she was making water before she got out for the first two or three days; we had fine weather; we pumped every watch of four hours, every day after the leak gained; we

Printed and Published by CHARLES KERR and JOHN FURBER, at the Morning Herald Press, my Office, Lower George-street, Sydney, New South Wales, Friday, December 14, 1849.